

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALEXANDER OCASIO,

Plaintiff,

vs.

HOWARD SKOLNIK, *et al.*,

Defendants.

3: 09-cv-00175-LRH-RAM

ORDER

Plaintiff, an inmate at Ely State Prison, is proceeding *pro se* and *in forma pauperis*. Pending before the court is plaintiff's complaint (Docket #1-2).

Screening Standard Pursuant to 28 U.S.C. § 1915A

The court must screen plaintiff's complaint pursuant to 28 U.S.C. § 1915A. Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, pursuant to the Prisoner Litigation
 2 Reform Act (PLRA), a federal court must dismiss a prisoner's claims, "if the allegation of poverty is
 3 untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be
 4 granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.
 5 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief may be granted
 6 is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard
 7 under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint.

8 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
 9 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
 10 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
 11 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In
 12 making this determination, the Court takes as true all allegations of material fact stated in the
 13 complaint, and the Court construes them in the light most favorable to the plaintiff. *See Warshaw v.*
 14 *Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to less
 15 stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9
 16 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*).

17 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
 18 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal
 19 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
 20 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful
 21 factual allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319,
 22 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

23 Screening of Complaint

24 This court has screened plaintiff's civil rights complaint pursuant to 28 U.S.C. §1915A.
 25 Plaintiff brings this action against the following individuals: Howard Skolnik, Director of the
 26 Nevada Department of Corrections; Don Helling, Deputy Director of the Nevada Department of
 27 Corrections, and E. K. McDaniel, Warden of Ely State Prison.

28 Plaintiff alleges that defendants refuse to apply the mandatory extra good time credits

1 provided by NRS 209.4465 to plaintiff's time of imprisonment from July 28, 2004, to the end of
2 June 2007. Plaintiff seeks an order from this court directing defendant Skolnik to apply these good
3 time credits equaling twenty days per month against plaintiff's sentence.

4 When a prisoner challenges the legality or duration of his custody, or raises a constitutional
5 challenge which could entitle him to an earlier release, his sole federal remedy is a writ of habeas
6 corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990),
7 *cert. denied* 11 S.Ct. 1090 (1991). "[A] state prisoner's § 1983 action is barred (absent prior
8 invalidation) - no matter the relief sought (damages or equitable relief), no matter the target of the
9 prisoner's suit (state conduct leading to conviction or internal prison proceedings) - *if* success in that
10 action would necessarily demonstrate the invalidity of confinement or its duration." *Wilkinson v.*
11 *Dotson*, 544 U.S. 74, 81-2, 125 S.Ct. 1242, 1248 (2005). In this case, plaintiff presents a claim
12 which, if successful, would invalidate the duration of his confinement. Accordingly, the court finds
13 that this civil rights action is barred.

14 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice to
15 plaintiff's right to file an appropriate habeas corpus action raising the claims raised herein.

16 **IT IS FURTHER ORDERED** that the clerk of the court is **DIRECTED** to enter judgment
17 accordingly and to close this case.

18 Dated this 22nd day of June, 2009.



20 LARRY R. HICKS
21 UNITED STATES DISTRICT JUDGE
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